

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CATHERINE SALAS,

Plaintiff,

No. CIV S-04-0851 KJM

vs.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

ORDER

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security ("Commissioner") determining plaintiff was overpaid Disability Income Benefits. For the reasons discussed below, the court will deny plaintiff's motion for summary judgment or remand and grant the Commissioner's cross-motion for summary judgment.

I. Factual and Procedural Background

In a decision dated July 25, 2003, the ALJ determined that the amount of overpayment, as determined by the Social Security Administration, was correct. The ALJ's decision became the final decision of the Commissioner when the Appeals Council denied plaintiff's request for review. The ALJ found plaintiff was entitled, effective September 1983, to a period of disability and disability insurance benefits based upon a Listing level visual

1 impairment; plaintiff returned to work in March 1994; as a result of the completion of the trial
2 work period and performance of significant gainful activity during the extended period of
3 eligibility, plaintiff was overpaid \$32,272.00 between March 1995 and December 1999; plaintiff
4 pled guilty to one count of theft of government property and was ordered to pay restitution in the
5 amount of \$1,614.00 to the Social Security Administration and also was ordered to cooperate
6 with the Social Security Administration and repay any previous overpayment; the judgment in
7 the criminal action did not relieve plaintiff of any further liability for recovery of the
8 overpayment; plaintiff is not credible; the regulations regarding the evaluation of self-
9 employment work activity of blind people were properly applied; and the overpayment amount,
10 as determined by the Administration, is correct. Administrative Transcript ("AT") 15-16.
11 Plaintiff contends there is a cognizable issue as to whether an overpayment occurred and disputes
12 the amount and basis of any overpayment.

13 II. Standard of Review

14 The Commissioner bears the burden of establishing with substantial evidence the
15 fact and amount of overpayments. McCarthy v. Apfel, 221 F.3d 1119, 1124-25 (9th Cir. 2000).
16 Substantial evidence means more than a mere scintilla of evidence, but less than a
17 preponderance. Saelee v. Chater, 94 F.3d 520, 521 (9th Cir. 1996) (citing Sorenson v.
18 Weinberger, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975)). "It means such relevant evidence as a
19 reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402
20 U.S. 389, 402, 91 S. Ct. 1420 (1971) (quoting Consolidated Edison Co. v. N.L.R.B., 305 U.S.
21 197, 229, 59 S. Ct. 206 (1938)). The record as a whole must be considered, Howard v. Heckler,
22 782 F.2d 1484, 1487 (9th Cir. 1986), and both the evidence that supports and the evidence that
23 detracts from the ALJ's conclusion weighed. See Jones v. Heckler, 760 F.2d 993, 995 (9th Cir.
24 1985). The court may not affirm the ALJ's decision simply by isolating a specific quantum of
25 supporting evidence. Id.; see also Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If
26 substantial evidence supports the administrative findings, or if there is conflicting evidence

1 supporting a finding of either disability or nondisability, the finding of the ALJ is conclusive, see
2 Sprague v. Bowen, 812 F.2d 1226, 1229-30 (9th Cir. 1987), and may be set aside only if an
3 improper legal standard was applied in weighing the evidence, see Burkhart v. Bowen, 856 F.2d
4 1335, 1338 (9th Cir. 1988).

5 III. Analysis

6 In a cursory argument with citations only to the Code of Federal Regulations,
7 plaintiff argues the overpayment was incorrectly calculated. There is no explanation offered as to
8 how analysis under the cited regulations would yield a different result in this case. Plaintiff's
9 implicit contention that substantial evidence does not support the finding that plaintiff was
10 overpaid and the finding regarding the amount of overpayment is without merit.¹

11 By pleading guilty to the theft of government property under 18 U.S.C. § 641,
12 plaintiff conceded the fact of overpayment. See United States v. Morrison, 113 F.3d 1020, 1022
13 (9th Cir. 1997) (res judicata precludes contesting of facts underlying guilty plea). With respect to
14 whether there was an overpayment in each month at issue, the ALJ correctly analyzed the amount
15 plaintiff could earn as a blind person under 20 C.F.R. § 404.1584. AT 13-15. Although there
16 was conflicting evidence in the record regarding the amount of plaintiff's earnings, the ALJ
17 found credible plaintiff's statements to the investigating officer that she earned \$1,200.00 to
18 \$1,300.00 per month during the time she was collecting disability benefits. AT 138-139, 142-
19 143. These numbers are consistent with the approximation made by plaintiff's brother and as
20 reported to the interviewing special agent. AT 137. It was within the province of the ALJ to

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22 ¹ Although she does not argue the point in her brief here, in both her request for
23 reconsideration and the request for hearing by Administrative Law Judge, plaintiff asserted only
24 that restitution was paid in the amount of \$1,614.00 and that therefore no further reimbursement
25 of overpayment was owed. AT 98, 120. A review of the judgment establishes criminal monetary
26 penalties were imposed, but in a separate provision plaintiff was directed to cooperate with the
Social Security Administration and repay any previous overpayment as determined by the Social
Security Administration. AT 74-77. Given the express language of the judgment and in light of
the entire record, substantial evidence supports the ALJ's finding that the judgment did not
relieve plaintiff of her civil liabilities for the entire amount of the overpayment. AT 51, 101, 102,
128.

1 resolve conflicts in the evidence. Magallanes v. Bowen, 881 F.2d 747, 750 (9th Cir. 1989).
 2 Although plaintiff testified she incurred some expenses in connection with her self-employment,
 3 she submitted no documentation regarding the claimed expenses for phone bills, fax machines,
 4 postage and special clothing. AT 217; see generally 20 C.F.R. §§ 404.1575(c), 404.1576. The
 5 tax returns submitted by plaintiff are of questionable validity given her history of reporting
 6 income under other Social Security Numbers; the returns also are in conflict with plaintiff's
 7 testimony at the hearing. AT 64 (tentative annual profit of \$6,874.00 in 1997); AT 41 (tentative
 8 annual profit of \$5,314.00 in 1998); cf. AT 217 (plaintiff testified to making between \$800.00-
 9 \$1,200.00 per month). For each month at issue, the amount earned by plaintiff exceeds the
 10 amounts allowable under 20 C.F.R. § 404.1584 and thus plaintiff is considered to have
 11 performed substantial gainful activity during the contested time periods.

12 The amounts overpaid for each month were set forth in the notice of
 13 reconsideration dated December 2, 2001.² AT 115-117; see also AT 86-87, 99-100. The
 14 amounts tabulated are added correctly in the December 2001 notice of reconsideration³ and the
 15 receipt of the disability payments was verified by plaintiff at the administrative hearing. AT 210-
 16 211. Because plaintiff performed substantial gainful activity during the months at issue, plaintiff
 17 was not disabled and therefore was not entitled to receipt of disability benefits. 20 C.F.R.
 18 § 404.1520. Moreover, contrary to plaintiff's assertion, plaintiff was afforded the benefit of a

19 ² Although the copy of the notice of reconsideration in the administrative record is
 20 illegible in the right margin, the amounts and dates referenced can be ascertained from the
 21 context of the legible portion.

22 ³ Plaintiff was advised in May 2001 that she had an overpayment of \$32,272.00 on her
 23 record. AT 88. The overpayment amount was corrected to \$29,938.00, with a balance owed of
 24 \$17,223.000, in the December 2001 notice of reconsideration. AT 116. Apparently overlooking
 25 the corrected amount set forth in the December 2001 notice, the ALJ in Finding no. 3 erroneously
 26 sets forth the uncorrected amount. However, because Finding no. 8 upholds the overpayment
 amount as determined by the Social Security Administration as correct, and the December 2001
 notice supersedes the May 2001 notice and was referenced in the body of the ALJ's decision (AT
 14), the matter will not be remanded for correction of this apparent typographical error, which is
 harmless. See Curry v. Sullivan, 925 F.2d 1127, 1129 (9th Cir. 1990) (harmless error analysis
 applicable in judicial review of Social Security cases).

1 trial work period and was not assessed an overpayment amount for the disability benefits
2 received during the trial work period. AT 116.

3 The ALJ's decision is fully supported by substantial evidence in the record and
4 based on the proper legal standards. Accordingly, IT IS HEREBY ORDERED that:

5 1. Plaintiff's motion for summary judgment or remand is denied, and

6 2. The Commissioner's cross-motion for summary judgment is granted.

7 DATED: September 29, 2005.

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10 UNITED STATES MAGISTRATE JUDGE
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